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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 69

BERNARD M. SHOTKIN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF COLORADO, EX REL., THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondent.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI.

WALTER F. DODD,
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Chicago, Ill.,
Attorney for Petitioner.

THE BUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

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GROUNDS OF PETITION FOR REHEARING.

By its action in this case, and by its action in *Shotkin* v. *Perkins, et al.* (October Term, 1950, 187 Misc.), this Court has (1) sustained an alleged criminal contempt, based upon trial by the Supreme Court of Colorado, with denial to petitioner of counsel, of witnesses, and of oral argument in such trial (Record, 10, 16, 25); (2) Approved a finding of contempt by the State Supreme Court, because of appearance in a trial court by petitioner, with threat of serious penalty at such time as the Court may decide to impose it; (3) Approved such action of the State Supreme Court upon appearance by petitioner in the trial court, the trial court originally handling the case, having, however, ruled such

appearance not to be violative of orders of the State Supreme Court (Record, 60); and (4) It has sustained the State Supreme Court's contempt procedure and applied penalty, with respect to an effort by petitioner to contest the validity of a state sales tax assessment of more than $6,000 which he was coerced to pay, and which was imposed upon sales made in other states to individuals and to the government of the United States, of articles never within the State of Colorado. This Court must be regarded as having approved a refusal of the trial court of the state to give petitioner a hearing when it found against him, this refusal being in accord with orders of the State Supreme Court, and being made by a trial judge other than the one originally charged with the case.

The first three points relate to the application of due process of law under the Fourteenth Amendment; the fourth to a right to contest the invalid application of a state law to interstate commerce.

The action of the Supreme Court of Colorado having defeated a remedy in state courts, petitioner sought a remedy in the United States District Court for the District of Colorado, but received a dismissal on the basis of action previously taken by the state trial court in denying him a hearing, and was not financially able to meet expenses in an attempt to obtain review by the United States Court of Appeals for the Tenth Circuit. Aid in an *in forma pauperis* proceeding to this Court was given by the Chief Judge of Appeals for the Tenth Circuit in permitting the original record in that Court to be employed in this Court, and a petition for certiorari was sought in *Shotkin* v. *Perkins, et al.*, No. 187 Misc., October Term, 1950. This petition, which was denied by this Court on October 16, 1950, deals with the same problem of remedy sought in Federal Courts, state court remedies being exhausted. The same constitutional issue as to a state sales tax upon sales not in the

state is avoided if this Court adheres to its present action, taken within a few days after petitioner's counsel received copies of Respondent's Answer. A reply brief to respondents will be promptly submitted *in forma pauperis,* together with an affidavit, but it is of importance to state that this case and that involve closely related issues.

In view of the position taken as to the cases by this Court, there can be no doubt of the denial of remedies under the Constitution of the United States.

This Court has refused to consider a denial of justice by the Supreme Court of Colorado, and by its trial courts. This denial has led to a similar denial by the United States District Court. Petitioner is thus denied any remedy with respect to a compulsory state sales tax upon sales of articles never in the State of Colorado nor sold therein.

Respectfully submitted,

WALTER F. DODD,
Attorney for Petitioner.

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

WALTER F. DODD,
Attorney for Petitioner.